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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,059	01/14/2002	Earl J. Votolato	019502.0015US1	3514
34284	7590	02/17/2005	EXAMINER	
ROBERT D. FISH RUTAN & TUCKER LLP 611 ANTON BLVD 14TH FLOOR COSTA MESA, CA 92626-1931			LINDSEY, RODNEY M	
		ART UNIT	PAPER NUMBER	
		3765		

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/047,059	VOTOLATO, EARL J.
	Examiner	Art Unit
	Rodney M. Lindsey	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 25 January 2005.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-6 and 14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 and 14 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 04 November 2002 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____ .
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claim 6 is withdrawn in view of the newly applied reference(s) to Koffler et al. Rejections based on the newly applied reference(s) follow.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: basis should be provided for the four flat side walls as set forth in claim 6.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 5 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Green. Green shows an open utensil/tongs comprising joined pockets at 26, 27 formed from a continuous piece of flexible material 2, the pockets sized to receive the fingers and thumb of a hand (see column 9, lines 65-67) and terminating in mutually opposable flattened surfaces (see Figures 2, 9). Product-by-process claim 1 although reciting features in terms of how they are made (molding) is still a product claim, and it is the patentability of the product and not the process steps (molding) that must be determined. The tongs of Green possess all the structure of the final product of claim 1. With respect to claim 3 inherently the utensil of Green will have a color thus meeting the limitation of color coded as claimed. With respect to claim 5 inherently

the utensil of Green will have a color. The requirement that the color indicate a task is not seen to set forth any structure of utensil not taught by Green or any function of the utensil not inherent in Green. With respect to claim 14 note the symmetry of the utensil of Green.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Jones. Green teaches the tongs having memory (see column 11, line 11) and the pockets joined at a hinge (see Figure 2), but does not teach forming the tongs of plastic. With respect to claims 2 and 4 note the use of plastic by Jones (see column 3, lines 12-15) or the use of paper by Jones (see column 3, line 13). It would have been obvious to one of ordinary skill in the art at the time of the invention to form the tongs of Green of the plastic of Jones to achieve the advantage of employing an alternative material capable of effecting a like result of flexibility and disposability.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Green in view of Koffler et al. Green is not seen to teach four substantially flat side walls as claimed. Koffler et al. in Figure 3 teaches old the use of four substantially flat side walls to form a pocket. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tongs of Green by providing the pockets with four substantially flat side walls in the manner of

Koffler et al. to thus keep the pockets open to properly receive the hand as taught by Koffler et al. (see page 1, column 2, lines 33-41).

Response to Arguments

8. Applicant's arguments filed October 7, 2004 have been fully considered but they are not persuasive. Contrary to applicant's remarks Green per Figures 2 and 9 clearly show opposable flattened surfaces at the termination of the pockets. The rejection of claims 1-6 and 14 ably set forth above is deemed proper in all respects.

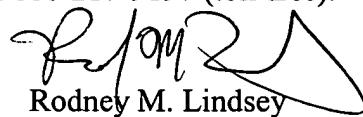
Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the flat walls in Figure 3 of Tassie.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey
Primary Examiner
Art Unit 3765

rml